

1 Title 5, California Code of Regulations

2 Division 1, Chapter 11, Subchapter 19, Article 3

3 Facilities for Charter Schools

4
5 Amend Section 11969.9 to read:

6 **~~§ 11969.9. Procedures and Timelines for the Request for, Reimbursement for, and~~**
7 **~~Provision of, Facilities.~~**

8 ~~—(a) A charter school must be operating in a school district as defined in Education Code~~
9 ~~section 47614 before it submits a request for facilities. A new or proposed new charter school is~~
10 ~~eligible to request facilities for a particular fiscal year only if it submitted its charter petition to a~~
11 ~~local education agency pursuant to Education Code section 47605 before November 15 of the~~
12 ~~fiscal year preceding the year for which facilities are requested. A new charter school is entitled~~
13 ~~to receive facilities only if it received approval of the petition before March 1 of the fiscal year~~
14 ~~preceding the year for which facilities are requested.~~

15 ~~—(b) To receive facilities during a particular fiscal year, a charter school must submit a written~~
16 ~~facilities request to the school district by October 1 of the preceding fiscal year. However, a new~~
17 ~~charter school, defined as a charter school that did not receive funds pursuant to Education Code~~
18 ~~section 47633 in the fiscal year preceding the fiscal year for which facilities are requested, must~~
19 ~~submit its written facilities request before January 1 of the preceding fiscal year. In the absence~~
20 ~~of a successful local school bond measure, a charter school making a request for facilities under~~
21 ~~this article in compliance with the procedures and timelines established in this section shall be~~
22 ~~entitled to receive facilities beginning on November 8, 2003.~~

1 ~~—(c)(1) The written facilities request must include:~~

2 ~~—(A) reasonable projections of in-district and total ADA and in-district and total classroom~~

3 ~~ADA;~~

4 ~~—(B) a description of the methodology for the projections;~~

5 ~~—(C) if relevant, documentation of the number of in-district students meaningfully interested in~~

6 ~~attending the charter school;~~

7 ~~—(D) the charter school's instructional calendar;~~

8 ~~—(E) information regarding the general geographic area in which the charter school wishes to~~

9 ~~locate; and~~

10 ~~—(F) information on the charter school's educational program that is relevant to assignment of~~

11 ~~facilities.~~

12 ~~—(2) Projections of in-district ADA, in-district classroom ADA, and the number of in-district~~

13 ~~students shall be broken down by grade level and by the school in the school district that the~~

14 ~~student would otherwise attend. School districts may require the charter school either to~~

15 ~~distribute a reasonable number of copies of the written facilities request for review by other~~

16 ~~interested parties, such as parents and teachers, or to otherwise make the request available for~~

17 ~~review.~~

18 ~~—(d) The school district shall review the projections and provide the charter school a~~

19 ~~reasonable opportunity to respond to any concerns raised by the school district regarding the~~

20 ~~projections. The school district shall prepare a preliminary proposal regarding the space to be~~

21 ~~allocated to the charter school and the associated pro rata share amount and provide the charter~~

22 ~~school a reasonable opportunity to review and comment on the proposal.~~

1 ~~—(e) The school district must provide a final notification of the space offered to the charter~~
2 ~~school by April 1 preceding the fiscal year for which facilities are requested. The school district~~
3 ~~notification must specifically identify:~~

4 ~~—(1) the teaching station and non-teaching station space offered for the exclusive use of the~~
5 ~~charter school and the teaching station and non-teaching station space to be shared with district-~~
6 ~~operated programs;~~

7 ~~—(2) for shared space, the arrangements for sharing;~~

8 ~~—(3) the in-district classroom ADA assumptions for the charter school upon which the~~
9 ~~allocation is based and, if the assumptions are different than those submitted by the charter~~
10 ~~school, a written explanation of the reasons for the differences;~~

11 ~~—(4) the pro rata share amount; and~~

12 ~~—(5) the payment schedule for the pro rata share amount, which shall take into account the~~
13 ~~timing of revenues from the state and from local property taxes.~~

14 ~~—(f) The charter school must notify the school district in writing whether or not it intends to~~
15 ~~occupy the offered space. This notification must occur by May 1 or 30 days after the school~~
16 ~~district notification, whichever is later. The charter school's notification can be withdrawn or~~
17 ~~modified before this deadline. After the deadline, if the charter school has notified the school~~
18 ~~district that it intends to occupy the offered space, the charter school is committed to paying the~~
19 ~~pro rata share amount as identified. If the charter school does not notify the school district by this~~
20 ~~deadline that it intends to occupy the offered space, then the space shall remain available for~~
21 ~~school district programs and the charter school shall not be entitled to use facilities of the school~~
22 ~~district in the following fiscal year.~~

1 ~~—(g) If the charter school believes that the space allocation offer provided pursuant to~~
2 ~~subdivision (e) does not comply with applicable statute or regulations, and chooses to initiate the~~
3 ~~dispute resolution process provided in subdivision (l), it must do so within ten days of the school~~
4 ~~district notification.~~

5 ~~—(h) The space allocated by the school district must be furnished, equipped and available for~~
6 ~~occupancy by the charter school at least seven days prior to the first day of instruction of the~~
7 ~~charter school.~~

8 ~~—(h) (i) The school district and the charter school shall negotiate an agreement regarding use~~
9 ~~of and payment for the space. The agreement shall contain at a minimum, the information~~
10 ~~included in the notification provided by the school district to the charter school pursuant to~~
11 ~~subdivision (e). In addition, if required by the school district, the agreement shall provide that the~~
12 ~~charter school shall:~~

13 ~~—(1) Maintain liability insurance naming the school district as an additional insured to~~
14 ~~indemnify the school district for damage and losses for which the charter school is liable; and/or~~

15 ~~—(2) Comply with school district policies regarding the operations and maintenance of the~~
16 ~~school facility and furnishings and equipment.~~

17 ~~—(i) (j) The charter school must report actual ADA to the school district every time that the~~
18 ~~charter school reports ADA for apportionment purposes. The reports must include in-district and~~
19 ~~total ADA and in-district and total classroom ADA. The charter school must maintain records~~
20 ~~documenting the data contained in the reports. These records shall be available on request by the~~
21 ~~school district.~~

22 ~~—(j) (k) The charter school and the school district may negotiate separate agreements and/or~~

1 reimbursement arrangements for specific services not considered part of facilities costs as
2 defined in Section 11969.7. Such services may include, but are not limited to, the use of
3 additional space and operations, maintenance, and security services.

4 ~~(1) Disputes between charter schools and school districts regarding the alleged violation,~~
5 ~~misinterpretation, or misapplication of Education Code section 46714 and this article shall be~~
6 ~~resolved using the dispute resolution process identified in the charter. If either party does not~~
7 ~~want to resolve the dispute in the manner identified in the charter, the following procedures~~
8 ~~apply:~~

9 ~~— (1) A charter school initiating the dispute resolution process shall bring the dispute before the~~
10 ~~school district governing board. A school district initiating the dispute resolution process shall~~
11 ~~bring the dispute before the charter school governing board. The appropriate governing board~~
12 ~~shall take action within 30 days of the request for consideration.~~

13 ~~— (2)(A) If action by the appropriate governing board does not resolve the dispute or if the~~
14 ~~appropriate governing board fails to take action within 30 days, the party initiating the dispute~~
15 ~~resolution process shall notify the other party (the responding party) in writing that it intends to~~
16 ~~proceed to mediation of the dispute and shall request the State Mediation and Conciliation~~
17 ~~Service to appoint a mediator within seven days to assist the parties in resolving the dispute. The~~
18 ~~initiating party shall request appointment of a mediator who is available to meet as soon as~~
19 ~~possible but not later than 45 days after receipt of the request for appointment.~~

20 ~~— (B) The parties may obtain assistance from another recognized dispute resolution~~
21 ~~organization or person instead of the State Mediation and Conciliation Service if mutually~~
22 ~~agreed.~~

1 ~~—(C) Within seven days of the appointment of the mediator, the party initiating the dispute~~
2 ~~resolution process shall prepare and send to both the responding party and the mediator a notice~~
3 ~~of dispute that shall include the following information:~~
4 ~~—(1) The name, addresses and phone numbers of designated representatives of the parties;~~
5 ~~—(2) A statement of the facts of the dispute, including information regarding the parties’~~
6 ~~attempts to resolve the dispute;~~
7 ~~—(3) The specific sections of the statute or regulations that are in dispute; and~~
8 ~~—(4) The specific resolution sought by the party.~~
9 ~~—(D) The responding party shall file a written response with the mediator and the party~~
10 ~~initiating the dispute within seven days of receipt of the initiating party’s notice of dispute.~~
11 ~~—(3)(A) The mediation procedure shall be entirely informal in nature; however, copies of~~
12 ~~exhibits upon which either party bases its case shall be shared with the other party. The relevant~~
13 ~~facts should be elicited in a narrative fashion to the extent possible, rather than through~~
14 ~~examination and cross-examination of witnesses. The rules of evidence will not apply and no~~
15 ~~record of the proceedings will be made.~~
16 ~~—(B) If an agreement is reached, the agreement shall be reduced to writing and shall be signed~~
17 ~~by the school district and the charter school. This agreement shall be non-precedential.~~
18 ~~—(C) If the school district and the charter school fail to meet within the specified timeline,~~
19 ~~have not reached an agreement within 15 days from the first meeting held by the mediator, or if~~
20 ~~the mediator declares the parties at impasse, either party may terminate mediation.~~
21 ~~—(4) In the event that mediation fails to resolve the dispute, the parties shall proceed to binding~~
22 ~~arbitration.~~

1 ~~—(A) The party initiating the dispute resolution process shall notify the responding party that it~~
2 ~~intends to proceed to binding arbitration and shall request the California State Mediation and~~
3 ~~Conciliation Service in writing to prepare a list of five charter school facility arbitrators within~~
4 ~~five days. The parties may obtain assistance from another recognized dispute resolution~~
5 ~~organization or person instead of the State Mediation and Conciliation Service if mutually~~
6 ~~agreed. Beginning with the responding party, the parties shall alternatively strike names from the~~
7 ~~list until only one name remains. Striking names from the list shall occur within five days of~~
8 ~~receipt of the list by the responding party. The party initiating the dispute resolution process shall~~
9 ~~contact the State Mediation and Conciliation Service regarding the selection of the arbitrator.~~
10 ~~Arbitration shall be scheduled and conducted within 45 days of selection of the arbitrator.~~
11 ~~—(B) No later than three days prior to the arbitration, the parties shall meet to attempt to frame~~
12 ~~the issue or issues to be submitted to the arbitrator, share all evidence, determine whether a court~~
13 ~~reporter is necessary, and attempt to settle the dispute, if possible.~~
14 ~~—(C) The function of the arbitrator shall be to hold an arbitration hearing concerning the~~
15 ~~dispute and to render a binding decision within 30 days after the close of the hearing. The~~
16 ~~arbitrator is empowered to include in any award such remedies he or she judges to be proper.~~
17 ~~—(D) All costs of the arbitration, including but not limited to, the arbitrator's fees, per diem,~~
18 ~~travel, and subsistence expenses; and the cost, if any, of a hearing room and transcription of the~~
19 ~~hearing, shall be borne equally by the school district and the charter school.~~
20 ~~—(5) Timelines specified in this subdivision may be extended by mutual written agreement of~~
21 ~~the parties.~~
22 ~~—(6) Either party may seek judicial review after exhausting the administrative procedures set~~

forth in this section.

~~— (7) Minimum qualifications for charter school facility arbitrators shall include professional experience or training with arbitration or mediation procedures in a public education context and knowledge of applicable disclosures regarding conflicts of interest and ethical conduct for arbitrators. Additional qualifications may include:~~

~~— (A) three years of professional, managerial, or governing board experience in planning, design, maintenance, or construction of public school facilities, and knowledge of procedures related to finance, design and construction of public school facilities, and~~

~~— (B) participation in training on Proposition 39 and provision of facilities to charter schools.~~

~~— Lists of arbitrators issued pursuant to subdivision (1)(4)(A) shall include information regarding the qualifications of arbitrators.~~

~~— (m) Notwithstanding any of the other provisions of this section, a charter school and the school district may mutually establish different timelines and procedures than provided in this section.~~

~~Note: Authority cited: Section 47614(b), Education Code. Reference: Section 47614, Education Code.~~

Add Section 11969.10 to read:

§ 11969.10. Procedures and Timelines for Dispute Resolution Regarding Facilities for Charter Schools.

(a) If the charter school believes that the space allocation offer provided pursuant to subdivision (e) of Section 11969.9 does not comply with applicable statute or regulations, and chooses to initiate the dispute resolution process provided in subdivision (b), it must do

1 so within ten days of the school district notification.

2 (b) Disputes between charter schools and school districts regarding the alleged violation,
3 misinterpretation, or misapplication of Education Code section 46714 and this article shall
4 be resolved using the dispute resolution process identified in the charter. If either party
5 does not want to resolve the dispute in the manner identified in the charter, the following
6 procedures apply:

7 (1) A charter school initiating the dispute resolution process shall bring the dispute
8 before the school district governing board. A school district initiating the dispute resolution
9 process shall bring the dispute before the charter school governing board. The appropriate
10 governing board shall take action within 30 days of the request for consideration.

11 (2)(A) If action by the appropriate governing board does not resolve the dispute or if
12 the appropriate governing board fails to take action within 30 days, the party initiating the
13 dispute resolution process shall notify the other party (the responding party) in writing
14 that it intends to proceed to mediation of the dispute and shall request the State Mediation
15 and Conciliation Service to appoint a mediator within seven days to assist the parties in
16 resolving the dispute. The initiating party shall request appointment of a mediator who is
17 available to meet as soon as possible but not later than 45 days after receipt of the request
18 for appointment.

19 (B) The parties may obtain assistance from another recognized dispute resolution
20 organization or person instead of the State Mediation and Conciliation Service if mutually
21 agreed.

22 (C) Within seven days of the appointment of the mediator, the party initiating the

1 dispute resolution process shall prepare and send to both the responding party and the

2 mediator a notice of dispute that shall include the following information:

3 (1) The name, addresses and phone numbers of designated representatives of the
4 parties;

5 (2) A statement of the facts of the dispute, including information regarding the parties'
6 attempts to resolve the dispute;

7 (3) The specific sections of the statute or regulations that are in dispute; and

8 (4) The specific resolution sought by the party.

9 (D) The responding party shall file a written response with the mediator and the party
10 initiating the dispute within seven days of receipt of the initiating party's notice of dispute.

11 (3)(A) The mediation procedure shall be entirely informal in nature; however, copies of
12 exhibits upon which either party bases its case shall be shared with the other party. The
13 relevant facts should be elicited in a narrative fashion to the extent possible, rather than
14 through examination and cross-examination of witnesses. The rules of evidence will not
15 apply and no record of the proceedings will be made.

16 (B) If an agreement is reached, the agreement shall be reduced to writing and shall be
17 signed by the school district and the charter school. This agreement shall be non-
18 precedential.

19 (C) If the school district and the charter school fail to meet within the specified timeline,
20 have not reached an agreement within 15 days from the first meeting held by the mediator,
21 or if the mediator declares the parties at impasse, either party may terminate mediation.

22 (4) In the event that mediation fails to resolve the dispute, the parties shall proceed to

1 binding arbitration.

2 (A) The party initiating the dispute resolution process shall notify the responding party
3 that it intends to proceed to binding arbitration and shall request the California State
4 Mediation and Conciliation Service in writing to prepare a list of five charter school facility
5 arbitrators within five days. The parties may obtain assistance from another recognized
6 dispute resolution organization or person instead of the State Mediation and Conciliation
7 Service if mutually agreed. Beginning with the responding party, the parties shall
8 alternatively strike names from the list until only one name remains. Striking names from
9 the list shall occur within five days of receipt of the list by the responding party. The party
10 initiating the dispute resolution process shall contact the State Mediation and Conciliation
11 Service regarding the selection of the arbitrator. Arbitration shall be scheduled and
12 conducted within 45 days of selection of the arbitrator.

13 (B) No later than three days prior to the arbitration, the parties shall meet to attempt to
14 frame the issue or issues to be submitted to the arbitrator, share all evidence, determine
15 whether a court reporter is necessary, and attempt to settle the dispute, if possible.

16 (C) The function of the arbitrator shall be to hold an arbitration hearing concerning the
17 dispute and to render a binding decision within 30 days after the close of the hearing. The
18 arbitrator is empowered to include in any award such remedies he or she judges to be
19 proper.

20 (D) All costs of the arbitration, including but not limited to, the arbitrator's fees, per
21 diem, travel, and subsistence expenses; and the cost, if any, of a hearing room and
22 transcription of the hearing, shall be borne equally by the school district and the charter

1 school.

2 (5) Timelines specified in this section may be extended by mutual written agreement of
3 the parties.

4 (6) Either party may seek judicial review after exhausting the administrative
5 procedures set forth in this section and Section 11969.9.

6 (7) Minimum qualifications for charter school facility arbitrators shall include
7 professional experience or training with arbitration or mediation procedures in a public
8 education context and knowledge of applicable disclosures regarding conflicts of interest
9 and ethical conduct for arbitrators. Additional qualifications may include:

10 (A)three years of professional, managerial, or governing board experience in planning,
11 design, maintenance, or construction of public school facilities, and knowledge of
12 procedures related to finance, design and construction of public school facilities, and

13 (B) participation in training on Proposition 39 and provision of facilities to charter
14 schools.

15 Lists of arbitrators issued pursuant to subdivision (b)(4)(A) shall include information
16 regarding the qualifications of arbitrators.

17 Note: Authority cited: Section 47614(b), Education Code. Reference: Section 47614,
18 Education Code.